



APR 3 2013

Jerry L. Falwell, Jr., JD.
Chancellor
Liberty University
1971 University Boulevard
Lynchburg, VA 24502-2269

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Dear Chancellor Falwell:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Liberty University (Liberty) a total of \$165,000 based on the violations of statutory and regulatory requirements outlined below. This fine action is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any or all of the programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV, HEA programs). Under the Department's regulations, the Department may impose a fine of up to \$27,500 for each violation. 34 C.F.R. § 668.84. As detailed below, this fine action is based on Liberty's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f), and the Department's regulations in 34 C.F.R. §§ 668.41 and 668.46.

Under the Clery Act, institutions participating in the Title IV, HEA programs must prepare, publish and distribute an Annual Security Report (ASR) by October 1 of each year. 34 C.F.R. § 668.41(e). The ASR must include a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). Specifically, the ASR must include a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses and aggravated assaults. 34 C.F.R. § 668.46(b)(2)(i). In addition, the ASR must report statistics for the three most recent calendar years concerning the occurrence of certain crimes on campus, in or on certain non-campus buildings or property, and on public property. 34 C.F.R. § 668.46(c). The crimes that must be reported include: criminal homicide (murder and manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal weapons possession. An institution must also specifically report on any crime that manifests evidence of a hate crime. 34 C.F.R. § 668.46(c). An institution must, in a manner that is timely and that will aid in the prevention of similar crimes, report to the campus community about such crimes, and about crimes considered by the institution to represent a threat to its students and employees. 34 C.F.R. § 668.46(e). The ASR must be distributed to current students and employees and must be made available to applicants for admission and employment to provide them with accurate, complete and timely information about crime and safety on campus. 34 C.F.R. § 668.41(e). Institutions must submit the crime

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statistics annually to the Department, which makes them publicly available. 34 C.F.R. § 668.41(e)(5).

On March 9, 2006, Security On Campus, Inc. (SOC) submitted a complaint to the Department alleging that Liberty had violated several provisions of the Clery Act. According to SOC, the complaint was filed on behalf of a few Liberty students, one of whom was reportedly the survivor of a sexual assault at Liberty. Specifically, the complaint alleged that Liberty did not provide accurate or complete crime statistics to students, employees, and the Department as a result of improper handling of a reported forcible sex offense that allegedly occurred in April 2005. The complaint also alleged that Liberty had violated the Clery Act's timely warning, crime log, policy disclosure, and annual security report distribution requirements.

In light of the SOC complaint, the Department conducted an off-site program review of Liberty's Clery Act compliance. The Department notified the University of the review in a letter dated April, 12, 2006. The focus of the review was Liberty's overall compliance with the Clery Act, specifically the allegations raised in the SOC complaint to the Department. The review consisted of an examination of the material submitted by Liberty in its response to the Department's written requests, and material submitted in support of the complaint filed by SOC. Liberty submitted its initial response on June 30, 2006, and a supplemental response on April 9, 2009. After reviewing Liberty's responses, the Department issued its Final Program Review Determination (FPRD) letter to Liberty on March 23, 2010. The FPRD is incorporated by reference into this fine action¹. (Enclosure 1).

The Department is taking this fine action based on the findings in the FPRD, which concluded that Liberty failed to disclose an April 13, 2005 aggravated assault in its crime statistics for calendar year 2005; failed to properly issue a timely warning to its campus community regarding the April 13, 2005 aggravated assault; failed to maintain an accurate crime log; failed to include required policy statements in its 2004 and 2005 ASRs; and failed to properly distribute its ASR for calendar year 2005.

LIBERTY FAILED TO PROPERLY COMPILE AND DISCLOSE CRIME STATISTICS

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must make available statistical information related to certain reported crimes and arrest and campus disciplinary referrals for alcohol, drug and illegal weapons possession violations. The statistical information must be disclosed by location – on campus (dormitories vs. residential facilities), in or on non-campus buildings or property, and on public property –

¹ Generally, the Department issues a Program Review Report (PRR) to an institution prior to issuing an FPRD. However, at the time this review was conducted, the Department did not issue PRRs in every off-site program review and one was not issued in this case. The Department did, however, provide Liberty with a full opportunity to respond to the allegations raised by SOC and to provide evidence to the Department prior to issuance of the FPRD.

and must be provided for the three most recent calendar years. C.F.R §§ 668.46(a), 668.46(c)(1) – (c)(4).

The statistical reports must be disclosed and made available as part of the institution's ASR by October 1 of each year, and must be electronically submitted to the Department for inclusion in the Campus Crime and Security Website. The Department has established timeframes within which institutions must electronically submit information. C.F.R § 668.41(e)(1)-(e)(5).

On February 20, 2005, a female student reported to the Liberty University Police Department (LUPD) that she had been sexually assaulted on February 12 and 13, 2005. On April 13, 2005, the same female student was attacked by 3 males as she exited the pedestrian tunnel that connects Liberty Campus East to the Main Campus. The victim reported the attack the same day to LUPD, and provided a written report on April 18, 2005 to LUPD. According to the victim's written report to LUPD, the attackers used "a wooden type stick." The victim's report to LUPD explained: "I was hit on top of the head and fell by the ditch on the left." The victim's statement to LUPD further stated, "I was threatened... I feared that worse things would happen... I changed my work schedule around to try to avoid being approached in the tunnel." In May 2005, the victim again contacted LUPD and stated that she had been sexually assaulted. Liberty did not disclose the April 13, 2005 aggravated assault incident in its 2005 crime statistics. In its response, Liberty argues that the April 2005 incident was not included in its calendar year 2005 crime statistics because "there was never a report made at all that complainant was sexually assaulted or raped in April 2005." Additionally, Liberty's response contends that "LUPD treated contact with (the victim/survivor) subsequent to the initial February 20 report as a continuation or supplement of the original report...."

The Clery Act and the Department's regulations require that institutions ensure the accuracy of the crime statistics when they are presented to students and employees who can use the data to make decisions affecting their personal safety. Students and employees must be able to rely on the institution's reported statistics. Liberty should have included the April 13, 2005 aggravated assault on the female student in its calendar year 2005 crime statistics. The "wooden type stick" was used as a weapon and the assault was so vicious that it should have been disclosed as an aggravated assault. Furthermore, Liberty's consolidation of separate and distinct crime incidents which took place three months apart is clearly improper for Clery Act reporting purposes.

LIBERTY FAILED TO PROPERLY ISSUE TIMELY WARNINGS TO ITS CAMPUS COMMUNITY

The Department's regulations require that institutions participating in the Title IV, HEA programs must, in a manner that is timely and that will aid in the prevention of similar crimes, provide a timely warning to the campus if certain crimes are reported to campus security authorities and are considered to represent a threat to students and employees. 34 C.F.R § 668.46(e). The crimes that must be reported include: criminal homicide (murder and

manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal weapons possession. An institution must also specifically report on any crime that manifests evidence of a hate crime. 34 C.F.R. § 668.46(c). The only exception to this requirement is if the crime is reported to a pastoral or professional counselor. 34 C.F.R. § 668.46(e)(2).

Liberty did not issue a timely warning to its campus community after the victim reported on February 20, 2005 that she had been sexually assaulted on February 12, and 13, 2005. The FPRD notes that on March 28, 2005, Liberty issued trespassing papers to one of the assailants, an indication that the University believed that there was a possible threat to the campus community. Liberty did not also issue a timely warning to its students and employees after the April 13, 2005 aggravated assault on the female student. After the April 13, 2005 aggravated assault, Liberty should have clearly known that there was a threat to its campus community and issued a timely warning. In May 2005, the victim again contacted LUPD and stated that she had been gang-raped by the same perpetrators that had previously sexually assaulted her. Liberty did not provide the reviewers with any evidence that a timely warning was considered or issued with regard to the alleged May 2005 sexual assault.

Liberty did not provide the Department with a legal or factual basis for not issuing a timely warning about the two sexual assaults reported to LUPD on February 20, 2005; the April 13, 2005 reported aggravated assault; and the alleged gang-rape reported by the same victim to LUPD in May 2005. However, in its response to the findings, Liberty stated that it “did not issue a timely warning about the April 2005 incident because no crime was ‘reported’ to Liberty within the meaning of the statute and regulations.” The Department disagrees with Liberty’s contention that a crime was not “reported” to Liberty within the meaning of the statute and regulations. The April 13, 2005 attack on the female student was an aggravated assault, a crime for which a timely warning is required under the Clery Act and the Department’s regulations. The FPRD notes that “a large wooden stick” was used as a weapon and the victim fell by the ditch, suggesting that the force used was overwhelming. Clearly, the attack on the female student on April 13, 2005 could have resulted in great bodily harm.

It is essential to students, employees, and the public that institutions provide timely warnings as frequently and systematically as needed to ensure the safety and well-being of the campus community.

LIBERTY FAILED TO PROPERLY MAINTAIN THE DAILY CRIME LOG

Under the Clery Act and the Department’s regulations, institutions participating in the Title IV, HEA programs that maintain a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a noncampus building or property, on public property, or

within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. 34 C.F.R. § 668.46(f).

The crime log must include the nature, date, time, and general location of each crime and the disposition of the complaint, if known. 34 C.F.R. § 668.46(f)(1)(1). The institution must make an entry or an addition to an entry to the log within two business days unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim. 34 C.F.R. § 668.46(f)(2) and (3). The institution must make the crime log available for public inspection. 34 C.F.R. § 668.46(f)(5).

Liberty failed to record the April 13, 2005 aggravated assault on a female student in the daily crime log. The attack met the definition of an aggravated assault and Liberty was required to include it in the crime log.

The reviewers also noted that in some instances, where a person reported several crimes that occurred on different dates and different locations, LUPD incorrectly reported the new crimes as an update to the original crime. Liberty's failure to maintain an accurate and complete daily crime log resulted in a reportable crime not being properly categorized and disclosed in the crime statistics published in its ASR for calendar year 2005.

LIBERTY'S CAMPUS SECURITY REPORTS OMITTED REQUIRED POLICY STATEMENTS AND WERE IMPROPERLY FORMATED

The Department's regulations require that participating institutions prepare an ASR that contains the institution's statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses; policies for preparing the annual disclosure of crime statistics; policies encouraging prompt reporting of crimes to the police; statements with a description of type and frequency of campus safety programs; a description of crime prevention programs; a statement explaining the importance of preserving evidence in cases of alleged sex crimes and an explanation of how to preserve the evidence; and a statement that describes procedures on voluntary, confidential reporting of crimes. 34 C.F.R. § 668.46(b)(2).

Liberty's ASR for calendar years 2004 and 2005 did not include the institution's policies regarding the preparation of the annual disclosure of crime statistics and the voluntary confidential reporting of crimes by professional and pastoral counselors. In all its ASRs through calendar year 2008, the reviewers did not identify any statement of Liberty's policy regarding voluntary confidential reporting.

In its response, Liberty conceded that its calendar years 2004 and 2005 ASRs omitted required statements and policies. Accurate and complete information on policies, procedures, and

programs can help members of the campus community make informed decisions and effectively assist in making important safety decisions.

LIBERTY FAILED TO PROPERLY DISTRIBUTE CAMPUS SECURITY REPORTS

Under the Clery Act and the Department's regulations, an institution participating in the Title IV, HEA programs must, by October 1 of each year, distribute, to all enrolled students and current employees, its ASR described in 34 § 668.46(b). The distribution must be through appropriate publications and mailings, including direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail; a publication or publications provided directly to each individual; or posting on an Internet website or an Intranet website. 34 C.F.R. § 668.41(e).

If an institution chooses to distribute its ASR to enrolled students by posting the disclosure on an Internet website or an Intranet website, the institution must include a notice of its availability stating the exact electronic address at which the information is posted; and a statement that the institution will provide a paper copy of the information on request. 34 C.F.R. § 668.41(c) and (e)(2).

If an institution chooses to distribute its ASR to current employees by posting the disclosure on an Internet website or an Intranet website, the institution must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request. 34 C.F.R. § 668.41(e)(3).

The institution must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. An institution must provide its ASR, upon request, to a prospective student or prospective employee. If the institution chooses to provide its ASR to prospective students and prospective employees by posting the disclosure on an Internet website, the notice described in this paragraph must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request. 34 C.F.R. § 668.41(e)(4).

Liberty failed to distribute its calendar year 2005 ASR by October 1, 2005 as required by the Clery Act and the Department's regulations. Liberty did not post the calendar year 2005 ASR until some point between March 9, 2006 and April 7, 2006, more than six months after the statutory deadline.

During the course of the review, the Department determined that Liberty's calendar year 2008 ASR was not posted as of April 3, 2009. Liberty apparently posted its calendar year 2008 ASR

late, between April 3 and April 13, 2009, more than seven months after the deadline established by the Clery Act.

The reviewers determined that Liberty did not meet the October 1 deadline to distribute its ASRs for calendar years 2005 and 2008. In both years, Liberty distributed its ASR at least 6 months late. Liberty's continued failure to understand and take seriously the requirements of the Clery Act endangers the entire campus community. Repeated late distribution of ASRs is an indication of a lack of administrative capability.

II.

In determining the amount of fine, the Department considers both the gravity of the offense and the size of the institution. 34 C.F.R. § 668.92. Pursuant to the Secretary's decision In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether it is above or below the median funding levels for the Title IV, HEA programs in which it participates. The latest year for which complete funding data is available for Liberty is 2010-2011 award year. According to the Department records, Liberty received approximately \$81,127,513 in Federal Pell Grant (Pell) funds, \$485,859,773 in Federal Direct Loan funds and \$3,575,014 in Campus-Based funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,831,456, for institutions participating in the Federal Direct Loan programs, the median funding level is \$3,415,923, and for institutions participating in the Campus-Based programs, the median funding level is \$272,450. Accordingly, Liberty is a large institution because its funding levels for Federal Pell Grant, Federal Direct Loan, and Campus-Based funds exceeds the median funding levels for those Title IV, HEA programs.

As detailed in this letter, the Clery Act violations identified at Liberty are very serious and numerous. These failures have endangered Liberty's students and employees who must be able to rely on the accurate reporting of crime and statistics; the timely warning of serious crimes; the accuracy of the daily crime log; disclosures of campus crime policies and statements; and the proper distribution of ASRs in order to take precautions for their safety. Moreover, the Department considers an institution's compliance with the Clery Act requirements to be part of its administrative capability, and Liberty's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.

After considering the gravity of the violations and size of the institution, I have assessed \$27,500 for Liberty's failure to properly compile and disclose crime statistics for calendar year 2005. This is a serious violation because the April 13, 2005 Aggravated Assault on a female student was not reported in the calendar year 2005 ASR. If an institution does not correctly classify and accurately report its crime statistics, students and employees are unable to make informed decisions about the safety of the campus community.

I have assessed \$27,500 for Liberty's failure to issue a timely warning after the two sexual assaults reported to LUPD on February 20, 2005; the April 13, 2005 reported aggravated assault; and the alleged gang-rape reported by the same victim to LUPD in May 2005. This is a serious violation because the intent of the timely warning requirement is to provide information to enable members of the campus community to protect themselves. The female victim reported that she was viciously assaulted by the same assailants who had previously sexually assaulted her on February 12 and 13, 2005. The occurrence of two similar crimes within two days and an aggravated assault within a short period of time was certainly evidence that the crimes were a threat to students and employees. The violation is compounded by Liberty's failure to issue a timely warning for the two reported prior sexual assaults on the same victim on February 12 and 13, 2005, the reported aggravated assault on the same victim on April 13, 2005, and the reported May 2005 gang-rape on the same victim.

I have assessed \$27,500 for Liberty's failure to maintain an accurate crime log. This is a serious violation because Liberty's failure to maintain and update its crime log entries could result in reportable crime statistics not being properly categorized and disclosed in its crime statistical reports. Again, students and employees are unable to make informed decisions on the safety of the campus community if incorrect statistics are reported.

I have assessed \$27,500 for Liberty's failure to include in its ASR the institution's policies regarding the preparation of the annual disclosure of crime statistics. This is a serious violation because students and employees cannot be expected to rely on statistical data when they do not know how that information was prepared. I have assessed \$27,500 for Liberty's failure to include in its ASR a statement about the voluntary confidential reporting of crimes by professional and pastoral counselors. This is a serious violation because by failing to include this required statement in its ASR, Liberty denied the campus community important information regarding confidential reporting of crimes. Students and employees cannot take advantage of information that has not been provided to them. The maximum fine is appropriate in each of the missing policy statements.

I have assessed \$27,500 for Liberty's failure to properly distribute its ASR for calendar year 2005. This is a serious violation because current and prospective students/employees must have access to an accurate and complete ASR.

The fine of \$165,000 will be imposed on **April 23, 2013**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. Liberty may submit both a written request for a hearing and written material indicating why a fine should not be imposed.

Jerry L. Falwell, Jr., JD.
Liberty University

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If Liberty chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid/Program Compliance
830 First Street, NE – UCP-3, Room 84F2
Washington, DC 20002-8019

Upon receipt of such a request, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of Liberty's case to a hearing official who will conduct an independent hearing. Liberty is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If Liberty does not request a hearing but submits written material instead, I will consider that material and notify Liberty of the amount of fine, if any, that will be imposed.

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT LIBERTY SUBMITS MUST BE RECEIVED BY APRIL 23, 2013; OTHERWISE, THE \$165,000 FINE WILL BE EFFECTIVE ON THAT DATE.

If you have any questions or desire any additional explanation of Liberty's rights with respect to this action, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,



Mary E. Gust, Director
Administrative Actions and Appeals Service Group
Federal Student Aid/Program Compliance
U.S. Department of Education

Enclosure

cc: Dr. Belle S. Wheelan, President, Southern Association of Colleges and Schools
Commission on Colleges, via bwheelan@sacscoc.org
Peter Blake, Director, State Council of Higher Education for Virginia, via
Peterblake@schv.edu